Crl.A. 141/2003
BEFORE
HON'BLE MR JUSTICE D.BISWAS, CHIEF JUSTICE(ACTING)

This appeal is directed against the judgment dated 6.3.2003 passed by the learned Sessions Judge, Nagaon in Sessions Case No 49(N)/2001 whereby the accused appellants have been convicted under Section 436/447/34 IPC and sentenced to rigorous imprisonment for two years and to pay a fine of Rs. 5,000/- , in default , to rigorous imprisonment for another three months under Section 436/34 IPC and further to rigorous imprisonment for one month under Section 447/34 IPC.

2. The prosecution case as unfurled in the FIR is that on 16.1.98, the accused persons set a house belonging to the informant on fire. They also ransacked the house of his brother. On receipt of the ejahar, Police investigated the case and, in due course, submitted chargesheet against Rabiram Kalita, Santosh Kalita, Upen Kalita and Prafulla Kalita. Prafulla Kalita was declared absconder. Therefore, charges were framed against the remaining three accused persons under Sections 447/436/34 IPC. On conclusion of trial, the aforesaid judgment of conviction and sentence was passed.

3. Mr. JM Choudhury, learned senior counsel for the appellants argued that the evidence adduced by the prosecution is not sufficient enough to warrant conviction of the accused persons. That apart, Mr Choudhury argued that the house in question was not ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property and, therefore, the conviction of the accused persons under Section 436 IPC cannot be maintained. Mr. Choudhury further pointed out that the evidence on record disclose involvement of the army personnel with the alleged crime.

4. In this case, five P.Ws including the I/O have been examined by the prosecution. The defence examined none. The defence case is of complete denial.

5. It would appear from the evidence of P.W.1 Mohendra Nath Bora that at the time of occurrence he was in the house of one Prafulla Master. One boy informed him that the accused persons set fire to his 'Pam' house. He came to the place of occurrence and found the accused persons standing there. In his cross-examination he stated that he had not seen who had set fire to the house. From his evidence, it cannot be said definitely that the accused persons set fire to the 'Pam' house.

6. P.W.2 Bakul Ch. Bora stated that he came to know that the 'Pam' house was set on fire by the accused persons. His house is at a distance of 11/2 k.m. Having come to know, he went there and, thereafter, contacted the Police and filed the ejahar (Exhibit-2). The evidence of P.W.2 also does not incriminate the accused persons. P.W.3 Naren Saikia stated that around 2 p.m. on the date of occurrence army personnel came in army vehicle and went to the house of Mohendra Bora and he saw the house of Mohendra Bora burning. He had also seen Suren @ Prafulla Kalita. He further stated that he did not visit the place of occurrence. The witness was declared hostile. Nothing could be elicited out of him to show that the accused persons had set fire to the 'Pam' house.

7. P.W.4 Pabin Saikia also stated that some people came in army vehicle. Accused Upen Kalita and one Suren Kalita came with the army. Upen and Suren demolished the house and set it on fire. Police came later on and seized certain articles. Exhibit-1 is the seizure list. In his cross-examination he stated that police came after 2/4 days. He further stated that the accused persons had filed a GR case against him. The case was still pending.

8. Of all the four witnesses, only P.W.4 stated that Upen and Suren had demolished the house of Mohendra Bora and set it on fire. The other three witnesses have not seen the accused persons setting the house on fire. Only P.W.4 has made incriminating statement against accused Upen Kalita. He has not stated anything against accused Rabiram Kalita and Santosh Kalita. This means his evidence cannot be fully relied upon if we accept the prosecution version that accused Rabiram, Santosh and Suren are the persons who set the house on fire. That apart, this witness is not in good terms with the accused persons as they had filed a GR case against him. Therefore, it would be unsafe to rely upon the evidence of P.W.4 to convict the accused persons. The evidence of P.W.5 Hari Charan Pathak is formal in nature and does not help the prosecution case.

9. In view of the above discussion, I am of the considered opinion that all the three accused persons are entitled to acquittal on benefit of doubt.

10. In the result, the appeal is allowed.

11. The impugned judgment of conviction and sentence is hereby set aside. The accused persons are set at liberty forthwith. The bail bond, if any executed, shall stand discharged.